IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1339 of 2003

IN

SUIT NO.1305 OF 2003

Mrs Vishni Jethmal Balwani .. Plff

versus

Savitri Prem Mirchandani & ors .. Defts

Mr K.H.Mody i.b Haridas & Co for Plff

Mr K.V.Tembe for Deft no.1

CORAM : D.G. KARNIK, J

DATED : 28th April 2005.

P.C:-

1. Heard learned counsel for the plaintiff and defendant no.1. None present for other defendant nos. 2 to 5.

2. Learned counsel for the plaintiff does not press for relief of appointment of a receiver.

3. This motion is taken out by the plaintiff in a

suit for a declaration that the suit flat is a joint family property of late Wadhumal Alimchandani, HUF and that the plaintiff and defendant nos. 1,2, 3, and the defendant nos. 4 and 5 jointly have equal 1/5th undivided share therein. The plaintiff and the defendant nos.1 and 3 are the daughters of late Wadhumal. The defendant no.2 is the son and defendant nos. 4 and 5 are the heirs of the pre-deceased son of late Wadhumal. Wadhumal died on 8th September, 1955. Eleven years after the death of Wadhumal, the suit flat was purchased by the defendant no. 1 in the year 1966. Learned counsel for the plaintiff however contends that the suit flat was purchased only in the name of the defendant no.1 out of the money of the HUF which money was thrown into the common hotchpot of the family by late Wadhumal in his life time and therefore the suit flat was a coparcenary property.

4. Prima facie, I am satisfied that the plaintiff has not produced satisfactory evidence to show that Wadhumal had thrown any money in the common hotch-pot and that the flat was purchased out of the joint family funds. On the other hand, the defendant no. 1 was serving in the United States of America and the flat has been purchased by her and prima facie, I am

of the opinion that the plaintiff has not made out a strong prima facie case nor proved that the flat was purchased out of joint family funds.

5. Assuming however in favour of the plaintiff that the late Wadhumal had thrown his own money into a hotch-pot in his life time i.e. prior to 1955 and the flat was purchased out of the joint family funds, at the most the flat would become the joint family property of the late Wadhumal. The plaintiff being a daughter (married in 1959) is not a coparcener. She therefore, cannot claim any share in the alleged joint family property of late Wadhumal.

6. In the circumstances, the plaintiff is not entitled to an injunction. Hence, motion is dismissed.

D.G.KARNIK, J

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